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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,456	06/18/2001	Naomi H. Lincoln		2709

7590

06/04/2003

KENNETH D. BAUGH
2413 Blodgett
Houston, TX 77004

EXAMINER

BHAT, NINA NMN

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/883,456	Applicant(s) LINCOLN, NAOMI H.	
	Examiner N. Bhat	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18-6-2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. In claims 1 and 8, applicant has used consisting of language which is closed language. Applicant has recited the proportion of ingredients used in making the barbecue sauce in percent by weight. The percent by weight has to add to 100%. In claims 1 and 8 the percent by weight adds to 100.04%. Applicant is required to adjust the proportions in both the specification and in the claims so that the weight percent adds to 100%. Applicant need not worry about a new matter rejection when making correction to the specification, because the examiner recognizes that this error was inadvertent on applicant's part.
3. Claims 1-29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

4. The invention relates to a process of making a barbecue sauce product by process consisting of blending together sauce ingredients which includes vinegar, lemon juice and sage, then cooking the sauce for a predetermined time and temperature, then adding red pepper, paprika, black pepper, white pepper, Worcestershire sauce, steak sauce, margarine, brown sugar, chili powder, garlic salt,

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onion salt, seasoning salt, meta tenderize, tomato sauce and ketchup with the first homogenous mixture to form a second homogeneous mixture; cooking the second homogeneous mixture at a second predetermined temperature and time and reducing the temperature to a third predetermined temperature for a predetermined time; cooling the mixture to ambient conditions and packaging the barbecue sauce in a container.

The process and product by process has not been taught either singularly or in combination by the prior art.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. White et al. teach a flavorful dry food condiment and process of providing the same. Coleman teach meat flavored vegetable protein product. Norris PGPUB 2003/0059513 teaches a process for combining ingredients to make a barbeque sauce using a cold pressing technique. Kratochvil teach using kappa carrageenan in sauces such as barbecue sauces, marinades and other food products. Romick et al. teach a method for preparing shelf stable tomato based food products.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Fridays 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-4039. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872- for regular communications and 703-872- for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-0779.

May 31, 2003


NINA BHAT
PRIMARY EXAMINER
GROUP 1200 1700